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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/043,433	01/07/1999	DAVID D. MUNDSCHEK	15050.4.2	6740

7590

05/07/2003

PHILIP M GOLDMAN  
FREDRIKSON & BYRON  
1100 INTERNATIONAL CENTRE  
900 2ND AVENUE SOUTH  
MINNEAPOLIS, MN 554023397

EXAMINER

GEORGE, KONATA M

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 05/07/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/043,433

Applicant(s)

MUNDSCHENK, DAVID D.

Examiner

Konata M. George

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on CPA filed April 1, 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8, 11-18 and 21-32 is/are pending in the application.
- 4a) Of the above claim(s) 24-26 and 30-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11-18 and 21-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Claims 1-8, 11-18 and 21-32 are pending in this application.

#### ***Continued Prosecution Application***

1. The request filed on April 1, 2003 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/043,433 is acceptable and a CPA has been established. An action on the CPA follows.

#### ***Action Summary***

2. Examiner acknowledges the cancellation of claims 9, 10, 19 and 20 and the addition of claims 21-32.
3. The rejection of record under 35 U.S.C. 112, 2<sup>nd</sup> paragraph with respect to "chemical agent" is hereby withdrawn.
4. The rejection of claims 1-8 and 11-18 under 35 U.S.C. 102(b) over Jass et al. is being maintained for the reasons stated in the previous office action.
5. Claims 21-23 and 27-29 are being rejected under 35 U.S.C. 102(b) over Jess et al. as well.

#### ***Response to Arguments***

6. Applicant's arguments filed September 10, 2002 have been fully considered but they are not persuasive.

Applicants argue that Jass et al. is concerned with an aerosol packaged that is used for separately storing and simultaneously mixing and dispensing a plurality of flowable materials. The reference neither teaches nor suggests a system for preparing, storing and delivering a homogeneous stable aqueous formulation that contains both a

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chemical agent and a delivery agent. It is the position of the examiner that Jass et al. do disclose the claimed invention. Applicant claim that Jass does not disclose a system for preparing or storing the formulation, however, neither a method of preparing nor a method of storing is claimed by applicant. As mentioned in the previous office action Example A does disclose a composition comprising hydrogen peroxide (i.e. chemical agent) and sodium lauryl sulfate (i.e. delivery agent). Furthermore, column 8, lines 63-64 describes that the peroxide composition and the toothpaste vehicle are filled into the inner container thus given a homogenous mixture. Thus, Jass et al. discloses the claimed invention.

### ***Response to Amendment***

Newly submitted claims 24-26 and 30-32 are directed to a non-elected species comprising "purified sea water" as the chemical agent.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

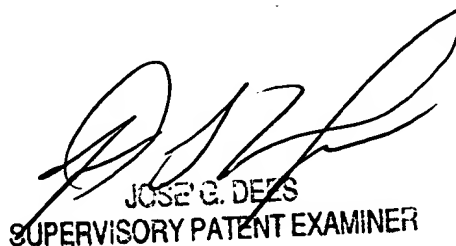
***Telephone Inquiries***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is (703) 308-4646. The examiner can normally be reached from 8AM to 5:30PM Monday to Thursday, and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, José Dees, can be reached at (703) 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Konata M. George

  
JOSE G. DEES  
SUPERVISORY PATENT EXAMINER

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